

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

SAMUEL LINDBLAD,

Defendant.

NOS. CR-05-206-RHW-2  
CV-09-1639-RHW

**ORDER DENYING  
PETITIONER'S MOTION FOR  
CERTIFICATE OF  
APPEALABILITY**

On April 1, 2011, the Court denied Defendant's Motion to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody (ECF No. 198). Defendant has appealed that order.

In order to pursue any appeal from the denial or dismissal for writ of habeas corpus brought by a federal prisoner under Section 2255, a petitioner must first obtain a certificate of appealability. 28 U.S.C. § 2253(c):

(c)(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from--

(A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; or

(B) the final order in a proceeding under section 2255.

(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

1 A district court possesses the authority to issue a certificate of appealability.  
 2 *United States v. Asrar*, 116 F.3d 1268, 1270 (9th Cir.1997). This Court will issue a  
 3 certificate of appealability when a petitioner makes a substantial showing of the  
 4 denial of a constitutional right. 28 U.S.C. § 2253(c)(2). To make a substantial  
 5 showing, the Petitioner must show that reasonable jurists could debate whether the  
 6 petition should have been resolved in a different manner or that the issues  
 7 presented were adequate to deserve encouragement to proceed further.’’ *Miller–El*  
 8 *v. Cockrell*, 537 U.S. 322, 335-336 (2003) (*quoting Slack v. McDaniel*, 529 U.S.  
 9 473, 484 (2000)).

10 For the reasons stated in the Court’s order denying habeas relief, Defendant  
 11 is not able to make a substantial showing of a denial of a constitutional right.  
 12 These determinations are not debatable among jurists of reason, a court could not  
 13 resolve the issues in a different manner, and there is no issue of sufficient adequacy  
 14 to deserve encouragement to proceed further. Because Petitioner has not made a  
 15 substantial showing of the denial of a constitutional right, the Court declines to  
 16 issue a certificate of appealability. 28 U.S.C. § 2253(c).

17 Accordingly, **IT IS HEREBY ORDERED**

18 1. Defendant’s Motion for Certificate of Appealability (ECF No. \_\_\_\_ ) is  
 19 **DENIED.**

20 2. The Court declines to enter a Certificate of Appealability

21 **IT IS SO ORDERED.** The District Court Executive is directed to enter this  
 22 Order and forward copies to Defendant and counsel.

23 **DATED** this 13<sup>th</sup> day of September, 2011.

24  
 25 s/Robert H. Whaley  
 26 ROBERT H. WHALEY  
 27 United States District Court

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**ORDER DENYING PETITIONER’S MOTION FOR CERTIFICATE OF  
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